

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CONSUMER FINANCIAL PROTECTION BUREAU,

Plaintiff,

V.

GLOBAL FINANCIAL SUPPORT, INC.,
d/b/a Student Financial Resource Center,
d/b/a College Financial Advisory; and
ARMOND ARIA a/k/a ARMOND AMIR
ARIA, individually and as owner and
CEO of GLOBAL FINANCIAL
SUPPORT, INC.,

Defendants.

Case No.: 15-cv-02440-GPC-WVG

ORDER GRANTING STAY
[ECF No. 25]

Before the Court is a motion to stay proceedings filed by Defendants Global Financial Support, Inc. d/b/a Student Financial Resource Center d/b/a College Financial Advisory and Armond Aria (collectively “Defendants”). (Mot. Stay, ECF No. 25.) The motion has been fully briefed. (See Opp’n, ECF No. 31; Reply, ECF No. 32.) The Court finds the motion suitable for disposition without oral argument. CIV. L. R. 7.1(d)(1). Upon consideration of the moving papers and the applicable law, and for the following reasons, the Court **GRANTS** in part Defendants’ motion and **STAYS** the case for **120 days** following this Order.

11

BACKGROUND

2 On October 29, 2015, Plaintiff Consumer Financial Protection Bureau’s (“Plaintiff”)
3 filed its Complaint against Defendants for alleged violations of Sections 1031(a),
4 1036(a)(1)(B), 1053 and 1055 of the Consumer Financial Protection Act (“CFPA”), 12
5 U.S.C. §§ 5531, 5536(a)(1)(B), 5564(a) and 5565 in connection with the offering,
6 marketing, sale and provision of student financial aid advisory services, and under Section
7 1016 of Regulation P, 12 C.F.R. § 1016.4(a), based on Defendants’ failure to provide a
8 required notice. (Compl. ¶ 1, ECF No. 1.) Defendant Aria is the owner and registered
9 agent of Global Financial Support, Inc., the President of College Financial Advisory, and
10 the CEO of Student Financial Resource Center. (*Id.* ¶ 10.)

Plaintiff alleges that from at least January 2011 until the present (the “Relevant Period”), Defendants have run a deceptive scheme to persuade high school seniors, enrolled college students and their families to participate in a student financial aid “program.” (*Id.* ¶ 22.) As part of the program Defendants promise to match students with targeted financial aid opportunities. (*Id.*) Defendants identify these consumers by purchasing lists of student information from online vendors. (*Id.* ¶ 28.) Plaintiff alleges that Defendants have sent millions of letters to consumers nationwide that employ seals and watermarks of iconic images found predominantly on seals and watermarks used by government agencies. (*Id.* ¶ 30.) At the top of each letter is a bold print box that includes a “filing deadline” and a “filing status,” which always reads “pending.” (*Id.* ¶ 31.) Each letter also includes in large bold print in a box at the center of the page a nine-digit “student profile number” and the name of the student’s academic institution. (*Id.* ¶ 32.)

23 The letters instruct students or their families to fill out and return an application
24 called a “Student Aid Profile Form” along with a “refundable processing fee”—which has
25 varied from \$59 to \$78 depending on the year—to proceed with the student aid “program”
26 and “apply for the maximum merit and need-based financial aid programs.” (*Id.* ¶¶ 33–
27 34.) Plaintiff alleges that the “Student Aid Profile Form” looks visually similar to the Free
28 Application for Federal Student Aid (“FAFSA”) and uses similar terms. (*Id.* ¶ 33.) On the

1 Student Aid Profile Form, Defendants promise to “review” and “assess” borrowers’
 2 applications and “strive to provide as many targeted financial aid opportunities as possible
 3 to each and every student, regardless of his/her financial status or academic performance.”
 4 (*Id.* ¶ 35.) Defendants’ letters warn that completed forms must be received by the filing
 5 deadline and that “the entire processing fee will be returned within ten (10) business days
 6 to all students who do not qualify or do not receive financial aid funding.” (*Id.* ¶¶ 37, 39.)
 7 Plaintiff alleges that Defendants’ letters represent that consumers will lose their
 8 opportunity to obtain student financial aid unless they submit the Student Aid Profile Form
 9 and pay the fee to Defendants by a specified date. (*Id.* ¶ 40.) Plaintiff alleges that
 10 Defendants’ “program” deadline does not correspond to any real deadline associated with
 11 any particular financial aid opportunity and is an arbitrary date that serves only to give the
 12 letters an artificial sense of urgency. (*Id.* ¶ 60.) Plaintiff alleges that Defendant Global
 13 Financial Support, Inc. claims its physical address is 3268 Governor Drive, Suite F, PMB
 14 144, San Diego, CA 92122 but the address is merely a PostalAnnex+ store near Defendant
 15 Aria’s home and not a business address. (*Id.* ¶¶ 7, 49.)

16 Along with the letters, Plaintiff alleges that Defendants’ scheme utilizes two
 17 websites—www.collegefinadv.org and www.studentctr.org—with .ORG as its generic
 18 top-level domain. (*Id.* ¶ 40.) The main pages of these two websites prompt consumers to
 19 input a “Student Profile Number” in order to enter the site and view content. (*Id.* ¶ 45.)
 20 However, although consumers are instructed that they must input their individual nine-
 21 digit number in order to access the content on the website, there is no individualized content
 22 on the website. (*Id.* ¶ 47.) The website provides instructions for downloading and filling
 23 out the Student Aid Profile Form. (*Id.*)

24 Defendants claim consumers can use a toll-free phone number to reach the “College
 25 Financial Advisory Student Aid Information Center.” (*Id.* ¶ 48.) Consumers’ calls to this
 26 number and the number provided for the Student Financial Resource Center are directed to
 27 a third-party answering service where an unaffiliated person answers the call, disclaims
 28 any association with the Defendants, and purportedly forwards any message along to the

1 Defendants. (*Id.*)

2 Plaintiff alleges that Defendants do not provide the services offered in their letters
 3 and on their website and do not fulfill their promise that “the entire processing fee will be
 4 returned within ten (10) business days to all students who do not qualify or do not receive
 5 financial aid funding.” (*Id.* ¶¶ 51, 57.) Instead, many consumers receive absolutely nothing
 6 or a generic booklet that is not tailored to the consumers’ circumstances in exchange for
 7 sending in their Student Aid Profile Form and fee. (*Id.* ¶¶ 58–59.) Plaintiff alleges that
 8 Defendants have obtained at least \$4.7 million in fees from at least 76,000 consumers
 9 during the Relevant Period. (*Id.* ¶ 60.)

10 On April 7, 2016, Defendants filed the instant motion to stay proceedings. (Mot.
 11 Stay, ECF No. 25.) On April 26, 2016, Magistrate Judge Gallo stayed all discovery
 12 pending resolution of Defendants’ motion to stay. (ECF No. 30.) On April 29, 2016,
 13 Plaintiff filed an opposition (Opp’n, ECF No. 31) and on May 5, 2016, Defendants filed a
 14 reply (Reply, ECF No. 32).

15 **LEGAL STANDARD**

16 “The Constitution does not ordinarily require a stay of civil proceedings pending the
 17 outcome of criminal proceedings.” *Keating v. Office of Thrift Supervision*, 45 F.3d 322,
 18 324 (9th Cir. 1995). Parallel civil and criminal proceedings are unobjectionable under
 19 Ninth Circuit precedent unless such proceedings substantially prejudice the right of the
 20 parties involved. *Id.* “The decision whether to stay civil proceedings in the face of a
 21 parallel criminal proceeding should be made ‘in light of the particular circumstances and
 22 competing interests involved in the case.’” *Id.* (quoting *Fed. Sav. and Loan Ins. Corp. v.*
Molinaro, 889 F.2d 899, 902 (9th Cir. 1989)).

24 In deciding whether to stay civil proceedings in light of parallel criminal
 25 proceedings, courts consider the following six factors: (1) the extent to which the
 26 defendant’s Fifth Amendment rights are implicated; (2) the plaintiff’s interests in
 27 proceeding expeditiously and potential prejudice resulting from a delay; (3) judicial
 28 efficiency; (4) the interests of nonparties; and (5) the public’s interests in the pending civil

1 and criminal litigation. *Keating*, 45 F.3d at 324–25. However, “the strongest case for
 2 deferring civil proceedings until after completion of criminal proceedings is where a party
 3 under indictment for a serious offense is required to defend a civil or administrative action
 4 involving the same matter.” *SEC v. Dresser Indus., Inc.*, 628 F.2d 1368, 1375–76 (D.C.
 5 Cir. 1980).

6 DISCUSSION

7 After considering the *Keating* factors, the Court finds that the circumstances weigh
 8 in favor of granting a temporary stay in the pending civil action.

9 A. Defendants’ Fifth Amendment Rights

10 “A defendant has no absolute right not to be forced to choose between testifying in
 11 a civil matter and asserting his Fifth Amendment privilege.” *Keating*, 45 F.3d at 326.
 12 Thus, while the extent to which a defendant’s Fifth Amendment rights are implicated is a
 13 “significant factor” to be considered, it is “only one consideration to be weighed against
 14 others.” *Id.* Nonetheless, other than cases involving bad faith or malice on the part of the
 15 government, “the strongest case for deferring civil proceedings until after completion of
 16 criminal proceedings is where a party under indictment for a serious offense is required to
 17 defend a civil or administrative action involving the same matter.” *Dresser*, 628 F.2d at
 18 1375–76. In such cases, allowing the civil action to proceed may undermine the
 19 defendant’s Fifth Amendment privilege, expand criminal discovery beyond the limits of
 20 Federal Rule of Criminal Procedure 16(b), expose the defense strategy to the prosecution
 21 before the criminal trial, or cause other prejudice. *Id.* at 1376.

22 Accordingly, where the civil proceeding wholly or substantially overlaps with the
 23 criminal proceeding, a court may be justified in staying the civil case, deferring civil
 24 discovery, or taking other protective measures. *Id.* The case for staying civil proceedings
 25 is “a far weaker one” when “[n]o indictment has been returned[, and] no Fifth Amendment
 26 privilege is threatened.” *Molinaro*, 889 F.2d at 903 (citing *Dresser*, 628 F.2d at 1376).
 27 However, the mere possibility of criminal prosecution is all that is necessary for the Fifth
 28 Amendment privilege against self-incrimination to be invoked. *See Matter of Seper*, 705

1 F.2d 1499, 1501 (9th Cir. 1983). While a defendant in a criminal case may constitutionally
 2 assert her Fifth Amendment rights with no adverse consequence, a trier of fact in a civil
 3 case may draw an adverse inference from invocation of the Fifth Amendment. *Doe ex rel.*
 4 *Rudy-Glanzer v. Glanzer*, 232 F.3d 1258, 1264 (9th Cir. 2000). But the Ninth Circuit has
 5 recognized that this consequence alone does not compel a stay pending the outcome of a
 6 related criminal case. *ESG Capital Partners LP v. Stratos*, 22 F. Supp. 3d 1042, 1046
 7 (C.D. Cal. 2014) (citing *Keating*, 45 F.3d at 326).

8 Here, Defendant Aria’s Fifth Amendment rights are clearly implicated. First,
 9 although no criminal charges have been filed, the Court has been presented with evidence
 10 of a current, ongoing law enforcement investigation by the IRS and FBI based on the same
 11 conduct as here, namely Defendants’ allegedly fraudulent business operations and
 12 practices. The parallel investigations appear to be as a result of a coordinated effort
 13 between the CFPB, IRS and FBI. On October 29, 2015, an agent for the CFPB, IRS agents
 14 and a process server concurrently arrived at Defendant Aria’s personal residence. (Aria
 15 Decl. ¶ 4, ECF No. 25–1.) The IRS agents, pursuant to criminal warrant (Aria Decl., Ex.
 16 A, ECF No. 25–1), searched Defendant Aria’s residence and seized electronic equipment,
 17 financial documents and cash belonging to Defendants. (*Id.* ¶¶ 5, 11.) Defendant Aria has
 18 been advised that the IRS’s criminal case against him and Global Financial has been
 19 referred to the U.S. Attorney’s Office and that federal officials have repeatedly represented
 20 to Defendants’ criminal defense counsel that the criminal investigation is ongoing. (*Id.*
 21 ¶ 13.) Defendant Aria represents that the federal government closed his business credit
 22 card and bank accounts associated with Global Financial. (*Id.* ¶ 12.)

23 Proceeding in this case while invoking the Fifth Amendment will protect Defendant
 24 Aria against self-incrimination. However the civil proceeding may “expand rights of
 25 criminal discovery beyond the limits of Federal Rule of Criminal Procedure 16(b), expose
 26 the basis of the defense to the prosecution in advance of criminal trial, or otherwise
 27 prejudice the case.” *Dresser*, 628 F.2d at 1376. With respect to Global Financial, the law
 28 is clear that a corporation has no privilege against compulsory self-incrimination. *United*

1 *States v. Kordel*, 397 U.S. 1, 7–8 & n. 9 (9th Cir. 1970) (collecting cases). Nevertheless,
 2 the Fifth Amendment rights of every director or officer who may speak on behalf of the
 3 corporation are implicated, and thus, the corporation is likely to be greatly prejudiced in its
 4 ability to meaningfully defend itself in the civil matter. *See Cadence Design Sys. v. Avant!*,
 5 *Inc.*, No. C 95–20828, 1997 U.S. Dist. LEXIS 24147 (N.D. Cal. July 22, 1997) (holding
 6 that a partial stay was appropriate in a civil proceeding against a corporate defendant where
 7 certain key witnesses would not be able to testify on behalf of the corporation until the
 8 conclusion of criminal proceedings). Here, Defendant Aria has represented that he is the
 9 only person who can testify on behalf of Global Financial as the sole owner and operator
 10 of Global Financial. (Aria Decl. ¶ 2, ECF No. 25–1.) Although Plaintiff argues that Global
 11 Financial had other employees who may testify (*see Opp’n at 11, ECF No. 31*), the parties’
 12 representations suggest that Defendant Global Financial *is* essentially Defendant Aria.

13 Thus, the Court thus finds that Defendants’ risk of forfeiting the privilege against
 14 self-incrimination or the ability to defend in this civil proceedings weighs in favor of
 15 granting a stay.

16 **B. Prejudice to Plaintiff**

17 Courts have recognized that a civil plaintiff has an interest in having her case
 18 resolved quickly. *See S.E.C. v. Loomis*, No. 2:10-cv-00458-KJM-KJN, 2013 WL
 19 4543939, at *2 (E.D. Cal. Aug. 27, 2013). Courts have also recognized that there may be
 20 prejudice to a plaintiff where a stay of discovery might result in her inability to locate other
 21 potential defendants. *See Gen. Elec. Co. v. Liang*, No. CV 13–08670 DDP(VBKx), 2014
 22 WL 1089264, at *4 (C.D. Cal. Mar. 19, 2014).

23 Plaintiff argues that it has a strong interest in proceeding expeditiously with this
 24 litigation and remediating impacted consumers. (*Opp’n at 11, ECF No. 31*.) As the agency
 25 charged with the enforcement of federal consumer financial laws, the CFPB must be able
 26 to respond quickly to violations and seek prompt judicial redress. Here, however, it appears
 27 unlikely that the alleged violations will continue if the case is stayed. Defendant Global
 28 Financial is closed or nonoperational as Defendant Aria does not have access to corporate

1 bank or credit card accounts. (Aria Decl. ¶ 12, ECF No. 25–1.) Plaintiff argues that
 2 although Defendant Aria claims he closed Global Financial, “there is no injunction and
 3 Defendants did not guarantee that GFS, Inc. will stay closed.” (Opp’n at 12, ECF No. 31.)
 4 Plaintiff also argues that Defendant Aria has withdrawn at least \$75,000 in cash from his
 5 corporate accounts since this action commenced and Plaintiff’s ability to obtain
 6 remediation will be “severely diminished if Defendants have time to manipulate their assets
 7 during a stay.” (*Id.* at 13.) If the risk if dissipating assets is as real and imminent as
 8 Plaintiff represents, the CFPB or the other federal agencies conducting a criminal
 9 investigation are free to seek a temporary restraining order to ensure the preservation of
 10 corporate assets.

11 Plaintiff also argues that an indefinite stay would be prejudicial because it will make
 12 it more difficult for the CFPB to locate witnesses, especially in this case where Plaintiff’s
 13 witnesses are students, a transient population. (*Id.*) The Court agrees that the delay
 14 associated with a stay may affect the availability of witnesses and documents or the quality
 15 of testimony. *See Dresser*, 628 F.2d at 1377 (“If Justice moves too slowly . . . witnesses
 16 may die or move away, memories may fade . . . ”). However, it is unlikely that a temporary
 17 stay would meaningfully affect Plaintiff’s ability to locate witnesses. Furthermore, federal
 18 agents have already seized many documents from Defendant Aria’s home, suggesting that
 19 much of the relevant evidence may be in the government’s possession. Thus, the Court
 20 finds that although this factor favors Plaintiff, it does not tip the overall analysis in
 21 Plaintiff’s favor.

22 **C. Burden on Defendants**

23 Courts have found that even when a defendant’s Fifth Amendment rights are
 24 implicated, this factor does not support granting a stay unless the defendant can show other
 25 “compelling factors as described in *Keating*.⁵” *See Gen. Elec. Co.*, 2014 WL 1089264, at
 26 *5. The Ninth Circuit has found that where a defendant has had adequate time to prepare
 27 for a related civil trial, the burden on the defendant is substantially diminished. *See*
 28 *Keating*, 45 F.3d at 325.

1 As discussed above, this civil proceeding implicates Defendant Aria's Fifth
 2 Amendment rights to a significant degree. Moreover, based on the coordinated effort
 3 between the federal agencies, it is likely that the agencies are/will be sharing information
 4 to the extent permitted by law if the criminal proceedings continue, which weighs in favor
 5 of Defendants' burden. Defendants also argue that due process rights are implicated due
 6 to "their inability to elicit useful testimony from Defendant Aria who will (properly) invoke
 7 his right against self-incrimination." (Mot. Stay at 10, ECF No. 25.) Plaintiff responds
 8 that Defendant Aria will be unable to provide exculpatory testimony that Defendants
 9 earned at least \$4.7 million between 2011 and 2015 from at least 76,000 consumers because
 10 Defendants have conceded this in their Answer. (Opp'n at 14, ECF No. 31.) On balance,
 11 the Court finds that this factor weighs in favor of Defendants.

12 **D. Judicial Efficiency**

13 The third *Keating* factor considers "the convenience of the court in the management
 14 of its cases, and the efficient use of judicial resources." *SEC v. Alexander*, No. 10-CV-
 15 04535-LHK, 2010 WL 5388000, at *5 (N.D. Cal. Dec. 22, 2010) (citing *Keating*, 45 F.3d
 16 at 325). Courts have recognized that this *Keating* factor normally does not favor granting
 17 a stay, because "the court has an interest in clearing its docket." *Molinaro*, 889 F.2d at
 18 903. On the other hand, a number of courts have concluded that staying a parallel civil
 19 proceeding in its early stages may prove more efficient in the long run. *See Douglas v.*
 20 *United States*, Nos. C 03-04518, C 04-05357, 2006 WL 2038375, at *5 (N.D. Cal. 2006)
 21 (allowing the criminal action to proceed first may narrow the issues and streamlining
 22 discovery in the civil proceeding); *Jones v. Conte*, No. C 045312S1, 2005 WL 1287017, at
 23 *2 (N.D. Cal. Apr. 19, 2005) (a stay would allow civil discovery to proceed
 24 unobstructed by self-incrimination concerns). While this factor on balance favors Plaintiff,
 25 a stay may make more efficient use of judicial resources.

26 **E. Interests of Third-Parties**

27 Plaintiff argues that the 76,000 plus consumers impacted by Defendants' scheme
 28 have an interest in obtaining justice and gaining remediation expeditiously. The Court

1 agrees that affected consumers' interest in obtaining relief is strong. Plaintiff also argues
2 that a stay would diminish the CFPB's ability to obtain remediation for consumers because
3 Defendant Aria is dissipating assets. (Opp'n at 13, ECF No. 31.) As discussed *supra*,
4 Defendants contend that they do not have access to corporate funds and federal agencies
5 can seek injunctive relief if the possibility of dissipation is imminent. Thus, although the
6 Court agrees that consumers have a significant interest in timely litigation of the civil
7 proceedings, a temporary stay would not significantly impair those interests.

8 **F. Interests of the Public**

9 Plaintiff argues that there is a strong public interest in proceeding with the civil case
10 because delay of proceedings may be detrimental to public confidence, the public has an
11 interest that an agency charged with enforcing federal consumer protection laws is able to
12 perform its statutory duties, and the public interest demands that Defendants' scheme be
13 stopped and consumers received remediation. (Opp'n at 16, ECF No. 31.) The Ninth
14 Circuit has recognized that delay of enforcement proceedings may be detrimental to public
15 confidence in an agency's enforcement scheme. *Keating*, 45 F.3d at 326. However, the
16 public also has an interest in ensuring the integrity of criminal proceedings. Thus, although
17 the public has a strong interest in the speedy resolution of the civil enforcement action, a
18 temporary stay would not undermine the public's confidence in the CFPB or affected
19 consumers' ability to receive remediation.

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CONCLUSION

Balancing Defendants' Fifth Amendment privilege against the other *Keating* factors, the Court concludes that the particular circumstances of this case warrant a stay. Accordingly, the Court **GRANTS** in part Defendants' motion to stay. The Court **STAYS** this case for a period of **120 days** and **VACATES** all dates presently set. The Court **SETS** a status conference for **September 16, 2016 at 1:30 p.m.**, at which time the parties will address whether a further stay of proceedings is necessary. The parties shall file a joint status conference statement on or before **September 9, 2016**, apprising the court of the propriety of continuing or vacating the stay.

IT IS SO ORDERED.

Dated: May 17, 2016


Hon. Gonzalo P. Curiel
United States District Judge